IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23146 of 2004

Between:

Ch. Brahmanandam, S/o. Mohan Rao,
R/o. Idupulapadu Village, Inkollu Mandal, Prakasam District.

..... PETITIONER

AND

1 The Joint Collector, Prakasam District, at Ongole.
2 The Revenue Divisional Officer, Ongole, Prakasam District.
3 The Mandal Revenue Officer, Inkollu Mandal, Prakasam District.
4 Pangaluri Ramaswamy, S/o. Markandeyulu,
Inkollu Mandal, Prakasam District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction particularly one in the nature of writ of mandamus declaring the inaction of the respondents 1 to 3 in completing the enquiry as illegal, arbitrary and contrary to the judgment of Apex Court and this Hon'ble Court reported in AIR 1982 SC 65 and 1996 (I) APLJ 266 and contrary to the order of the Joint Collector dt. 14. 9.2004 in D.Dis. (CS 2)/2649/2004 and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner:MR.M.RAVINDRANATH REDDY

Counsel for the Respondents 1 to 3: GP FOR CIVIL SUPPLIES

Counsel for the Respondent NO.4: Mr. D.Krishna Murthy

The Court, at the stage of admission, made the following :

ORDER:

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The dealership of the petitioner was suspended by the 2nd respondent through proceedings, dated 15.07.2004. Aggrieved thereby, he preferred an appeal before the 1st respondent together with an application for grant of stay. Complaining that the application for grant of stay was not disposed of, petitioner filed W.P.No.13389 of 2004, which was disposed of on 30.07.2004, directing the 1st respondent to pass appropriate orders on the application for stay and that the petitioner shall be entitled to distribute the essential commodities till the disposal of such application.

Through order, dated 03.08.2004, the 1st respondent rejected the application for stay. Petitioner filed W.P.No.14209 of 2004. By the time the writ petition was taken up, the 2nd respondent appointed the 4th respondent herein as a temporary dealer. In that view of the matter, the writ petition was disposed of directing the 1st respondent to pass orders in the appeal itself. Now the 1st respondent has dismissed the appeal through order, dated 14.09.2004. The same is challenged in this writ petition.

Heard the learned counsel for the petitioner, the learned Government Pleader for Civil Supplies and the learned counsel for the 4th respondent.

The 2nd respondent suspended the authorization on the allegation that the petitioner was selling essential commodities at higher prices and was not supplying the

quantities up to the stipulated limits. He preferred an appeal before the 1st respondent against the order of suspension. The 1st respondent disposed of the appeal with the following observations:

> "Since the suspension is only an interim punishment and the disciplinary case is pending before the Revenue Divisional Officer, the matter is remanded to the Revenue Divisional Officer, Ongole, to dispose of the case within a period of one month. The appeal is disposed off accordingly."

Clause 5 (4) of the A.P. Public Distribution System Control order, 2001, prescribes the procedure to be followed for suspending or canceling the authorization of a dealer. A perusal of the same indicates that suspension or cancellation is to be preceded by an enquiry and Show-Cause Notice. Such a notice, however, is not necessary where the suspension is directed as a measure, pending enquiry. In the order, dated 15.07.2004, it is not indicated that the suspension is pending enquiry. Therefore, it has to be treated as a substantive punishment. The same could not have been inflicted without issuing any notice. This is one substantial irregularity committed by the 2nd respondent.

The 1st respondent did not examine the matter with reference to the allegations against the petitioner or the relevant provisions of law. What appears to have weighed with the 1st respondent in disposing of the appeal is that the suspension is ordered as interim punishment. It is all the more a reason why it ought to have been preceded by enquiry. Further, the order does not disclose as to whether the appeal was rejected or allowed.

For the foregoing reasons, this Court is of the view that the order of suspension passed by the 2nd respondent against the petitioner cannot be sustained. The same is accordingly set aside. In case, the 4th respondent has paid any amount towards costs of essential commodities yet to be supplied, the petitioner shall be entitled to lift the same on payment of such costs to the 4th respondent.

Accordingly, the writ petition is allowed. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dated : 14th December, 2004

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To

1 The Joint Collector, Prakasam District, at Ongole.
2 The Revenue Divisional Officer, Ongole, Prakasam District.
3 The Mandal Revenue Officer, Inkollu Mandal, Prakasam District.
4 2CCs to G.P. for Civil Supplies, High Court Buildings,

Hyderabad(OUT).

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